
(2020) 08 DEL CK 0060

In the Delhi High Court

Case No : Criminal Writ Petition No. 1227 Of 2020, Criminal Miscellaneous
Application No. 10857 Of 2020

Nuhu Sheikh @ Noor Sheikh

APPELLANT

Vs

State (GNCT Of Delhi)

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Citation : (2020) 08 DEL CK 0060

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Rahul Tyagi, Sanjay Lao

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.

2. The present petition has been preferred under some unusual circumstances owing to the lockdown due to which international flights etc., are not

operating and the counsel who is in Australia is unable to travel back to India. Trial in FIR No. 05/2014 titled State v. Tamanna is going on before the

Id. Additional Sessions Judge, (Central), Tis Hazari Courts. Bail application was moved on behalf of one of the accused - Mr. Kurban, being Bail

Application No.1385/2020, who is still in custody. In the said bail application, this Court had passed the following order on 13th July, 2020:

â??1. This hearing has been done by video conferencing.

2. Pursuant to the last order, the nominal roll has been received from the jail. The status report is stated to have been filed, however it is not

on record. Let the same be placed on record.

3. Mr. Suraj Sharma, Id. Counsel for the Petitioner submits that the main co-accused, Tamanna has already been granted bail. Let the said

order be placed on record. In the meantime, since there is only one witness whose evidence is to be recorded by the Trial Court and it has

been pending since one year, it is directed that the concerned Trial Court shall record the evidence of the outstanding witness which is

pending, before the next date of hearing. If required, evidence can be recorded via video conferencing.

4. Let the evidence be recorded and a status report of the trial be also placed on record by the prosecution.

5. List on 4th September, 2020. Let a copy of this order be sent to ASJ (Central), Tis Hazari Courts, Delhi, where the trial is going on.â??

3. In compliance of the above order, the Id. ASJ has commenced the cross-examination of the last two witnesses. The Id. Sessions Judge had noted

on 4th August, 2020 that there are two witnesses i.e., PW-19 and one FSL expert, who remain to be examined. The said two witnesses have been

examined and cross-examined by the accused - Mr. Kurban and Ms. Tamanna. However, PW-19 is yet to be cross-examined on behalf of the third

co-accused - Nuhu Sheikh @ Noor Sheikh.

4. The Id. ASJ was of the opinion that PW-19 is a crucial witness to whom various records would have to be put during cross-examination. Mr. Rahul

Tyagi, Id. counsel for Nuhu Sheikh @ Noor Sheikh, expressed his difficulty in travelling from Australia owing to the lockdown and the lack of

international flights. The Id. ASJ has listed the matter on 17th August, 2020. Accordingly, the present petition has been preferred on behalf of Mr.

Nuhu Sheikh @ Noor Sheikh.

5. Mr. Tyagi, Id. counsel submits that though he is willing to conduct the cross-examination through video conferencing. However the same would be

slightly difficult in view of the records, etc., not being available with him. Further, he submits that the Id. ASJ was also of the opinion that it is advisable

to conduct the cross-examination physically instead of through video conferencing owing to the nature of the matter and the significance of the

deposition of PW-19. Accordingly, it is prayed that the Petitioner be permitted to record the cross-examination only after resumption of physical

functioning of the Court. It is also submitted that two of the co-accused have

already been released on bail.

6. Mr. Sanjay Lao, Id. ASC appearing for the prosecution submits that since the cross-examination on behalf of Mr. Kurban, whose bail application is

pending, has already been concluded, he has no objection if the remaining cross-examination is done once physical court starts functioning.

7. In view of the above facts and circumstances, the present writ petition is disposed of with the following directions:

i. Insofar as the cross-examination of PW-19 on behalf of Mr. Nuhu Sheikh @ Noor Sheikh is concerned, the same is permitted to be conducted after

resumption of physical courts, once the counsel is able to travel back to India;

ii. Insofar as the bail application of Mr. Kurban is concerned, the same shall be considered on its own merits.

8. The present writ petition is disposed of in the above terms. All pending applications are also disposed of.